IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1017 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TARABHAI MAHADEVBHAIK PATEL
Versus
STATE OF GUJARAT

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Appearance :
MR ASHISH M DAGLI for Appellant
MR SS PATEL APP for Opponent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 04/10/2006

ORAL JUDGMENT

1 This Appeal is preferred against the judgment and order

delivered by learned Special Judge, Banaskantha at Deesa, on 28th of July, 2003, by which the present appellant came to be convicted for the offence punishable under Section 17(b) of the Narcotics Dugs and Psychotropics Substance Act, 1985, and was sentenced to undergo rigorous imprisonment of seven years and to pay fine of Rs. 50,000/- in default to undergo rigorous imprisonment of one year. Set off is given to the appellant for the period for which he remained under-trial.

2 As per brief facts of the prosecution case, Mr. P.B. Patel, Police Inspector, LCB, District – Banaskantha at Palanpur, received an information at 6.15 hours on 31st of January, 2000, at his residence that the present appellant was to transport substance of opium about 10.30 a.m. to 11.00 a.m. near cross-road of village Deodar – Bhesan. The information was that the appellant was to go to village Behsan by walking. Necessary procedure under the NDPS Act to reduce the information in writing was carried out and a team of police personnel was prepared, to whom information received, was conveyed. A confidential report in this respect also was made to superior officer and from Palanpur a team of Local Crime Branch in leadership of Mr. P.B. Patel reached at village Deodar at about 8.40 a.m. in Government Guest House. Local police was informed and ASI Mr. Shersinh Govindram was directed to call for panchas and he brought (1) Mr. Jayantibhai Thakkar and (2) Shri Bhavanji Thakore from the

town of Deodar. Along with these panchas, after completing first part of panchnama from 9.20 a.m. to 9.50 a.m., this police party reached Deodar to Bhesan cross-road at 10.05 a.m. The government vehicle was concealed and police personnel as well scattered themselves. At about 10.55 a.m. appellant was found going from Bhesan on the said cross-road having one bag on his right shoulder. On signalling, the appellant was cordoned by the police personnel and attempted to escape from the said cordon, but he was apprehended. The police officers introduced themselves and name and address of the appellant were asked. He was searched after completing the necessary procedure under Section 50 of the NDPS Act and appellant agreed to be searched in presence of police officer. On his search, from a bag hanging on the right shoulder of the appellant, one more bag was found and from that bag, substance was found, and on smelling the same, the substance was emitting smell of opium. The substance thereafter found from the appellant was weighed after calling one person named as Sureshkumar Venkatram Thakkar and it was found that the said substance was weighing about 1kg and 900 grams and was seized by the police which was costing about Rs. 19,000/-. The said substance was divided and two samples of each of 50 grams were separated from the said substance and were sealed as per the procedure prescribed in the panchnama and one of the same was thereafter sent to concerned laboratory. A panchnama was drawn, which was completed at 13.15 hours.

Police Inspector, LCB, Mr. Patel offered his complaint at Deodar Police Station in this respect and the offence was thereafter investigated by one Hathiji Becharji Chavda, Police Sub-Inspector of Deodar Police Station and a charge sheet for the offence punishable under Section 17(b) of the NDPS Act was submitted against present appellant. Special Judge framed charges against the appellant vide Exhibit-19 on 1st of April, 2002, to which the appellant pleaded not guilty. The prosecution thereafter examined as many as 13 witnesses and produced on record voluminous documentary evidence. Thereafter, under Section 313 of the Criminal Procedure Code, further statement of the accused - appellant was recorded, in which his defence was of total denial and the explanation which the appellant offered was that a false complaint had been filed against him. After hearing both the sides, the learned Special Judge came to the above conclusion and, therefore, this Appeal.

3 Learned Advocate Mr. A.M. Dagli for the appellant and learned APP Mr. S.S. Patel for the respondent State were heard in detail.

4 Learned Advocate Mr. Dagli after going through the record and arguments, restricted his arguments only to the extent of quantum of sentence imposed upon the appellant. It was submitted that so far as the merits of the matter is concerned and

so far as the conviction of the appellant for the above said offence is concerned, he has nothing to say, but according to him, in the peculiar facts and circumstances of the case, this is a peculiar kind of incident, in which the quantum of sentence is urged to be reduced to the extent undergone. Learned APP Mr. S.S. Patel was also heard in respect of quantum of sentence.

5 Learned Advocate Mr. Dagli for the appellant submitted that the present appellant is of 36 years of age, at present an opportunity to live a life of law abiding citizen on account of his younger age is available to the appellant. It is submitted that, in fact, the appellant belongs to a joint poor agricultural family where the father, who was acting as Karta of the family, passed away after the incident occurred. Therefore, the responsibility of the family is now upon the shoulder of the appellant. It is submitted that the appellant sincerely repents whatever happened, which not only ruined himself but his whole family. It is submitted that the appellant has two children, out of which, one is aged five years and other is aged about seven years. It is submitted that out of his two children, one son is handicapped and for whole of the life, appellant is required to look after him. It is further submitted that his only brother, residing with him in joint family, is also handicapped to the extent of 45% and is not able to do any work perfectly. It is submitted that maintenance of the family is from the agricultural land which is

about 5 vigas, and from this land, including appellant, six members of the family are to be maintained. Above this, he has aged mother and wife also in the family. It is submitted that at present in absence of the appellant, there is nobody in the family to look after the agriculture also. This is is the only source of income for the entire family. It is submitted that there are no antecedence of any sort so far as appellant is concerned. The appellant is the only bread winner of the family, and it is submitted that he may be given a chance to restore a peaceful and law abiding citizen and to live a life of normal and ordinary human being as head of the family. It is, on behalf of the appellant, vehemently and with full vehemence, submitted that the crime committed by the appellant will never be repeated by him, and that he has already undergone rigorous imprisonment of more than five years, for the charges levelled against him. It is, therefore, submitted by learned Advocate for the appellant that while the Appeal is not pressed on merits, very peculiar facts and circumstances are urged for the reduction of quantum of punishment.

6 Hearing learned counsels for the parties and going through the record and with reference to the only contention raised in respect of quantum of punishment, it must be remembered that, the object of punishment is deterrent, reformative and retributive. Punishment serves a purpose

inasmuch as it acts deterrent for those who have propensity to commit such offences. While imposing punishment, the main objectives i.e. (i). punishing the criminal not to repeat the crime, and (ii) attempt to reform him to be a responsible member of the society must be taken into consideration. The third object of retributive punishment is not relevant in the facts of this case. True it is that, what is found from the appellant is the narcotic substance i.e. opium to the extent of 1 kg and 900 grams. It is also true that, the quantity which is found is higher than the minimum and lesser than the commercial quantity of 2.5 kgs. The quantity which is found is nearer to the commercial quantity and little away from the minimum quantity, as prescribed by the Schedule of the Act. The question, therefore, is what should be the appropriate punishment for the crime committed by the appellant. It calls for balancing the quantum of punishment with a seriousness of crime with reference to mitigating circumstances as submitted by learned Advocate for the appellant. Undoubtedly, the offences under the NDPC Act are serious crimes. Not only affecting particular region, country or this planet, but adverse effect of narcotic substance have to be endured by the very human race. At the same time, while taking a strict view in imposing punishment, other balancing factors should also be taken into consideration, so appropriate punishment to a criminal, to ensure peace of the society, can be imposed upon the criminal.

7 Under Section 17(b) of the Narcotic Drugs and Psychotropic Substances Act, the sentence provided for is a rigorous imprisonment for a term which may extent to 10 years and with fine which may extent to Rs. 1 lakh. According to the record, the present appellant came to be arrested on 31st of January, 2000. He was sentenced, as aforesaid, on 28th of July, 2003, giving benefit of set off, as per Section- 428 of the Criminal Procedure Code. The learned APP has submitted jail record of the present appellant, which indicates that before conviction, the appellant has already undergone the imprisonment of two yeas one month and 8 days, while after the date of conviction and sentence, the appellant has undergone imprisonment of three years one month and one day. Meaning thereby that, out of the imprisonment of seven years and default imprisonment of one year, as imposed by the Trial Court, today, the appellant has already undergone imprisonment of five years, two months and nine days. He is expected to be released on 20th of June, 2009, if the appellant does not pay fine of Rs. 50,000/- and undergoes the default punishment. The jail remarks further denotes that the jail conduct of the appellant is good and for twice in 2004 he was released on temporary bail and he surrendered before the Jail Authorities in time.

8 In these extremely peculiar circumstances of this case, submission of learned Advocate for the appellant, for

reduction of the quantum of punishment, are required to be taken into consideration. The substantive sentence of seven years as imposed by the Trial Court, therefore, is required to be reduced to five years and the amount of fine which is imposed by the Trial Court is required to be reduced to Rs. 15,000/- instead of Rs. 50,000/-, in default instead of one year, rigorous imprisonment, modifying and reducing the same, six months rigorous imprisonment is required to be imposed. It is felt that this modification and reduction in sentence will achieve the substantial ends of justice.

9 In above view of matter, this Appeal is partly allowed. While maintaining the conviction as awarded by the Trial Judge to the appellant, the sentence imposed upon the appellant is reduced and modified. The appellant is directed to undergo five years rigorous imprisonment instead of seven years rigorous imprisonment as imposed by the Trial Court. Appellant is further directed to pay fine of Rs. 15,000/- in default to undergo rigorous imprisonment of six months instead of to pay fine of Rs. 50,000/- in default to undergo rigorous imprisonment of one year as imposed by the Trial Court. Except the above said modification and reduction of sentence, the rest of the Appeal of the appellant stands dismissed. The order passed by the Trial Court in respect of muddamal, etc. is not interfered with. On serving of sentence by the appellant, as reduced and modified by this

Court in this Order, the appellant shall be set at liberty if he is not required to be detained in jail for any other purpose. DS permitted.

(J. R. VORA, J.)

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